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Supreme Court of The United States

OCTOBER 1948 TERM

No......

PIERCE G. WHITE,
Petitioner,

vs.

SAMUEL FEINBERG,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To Honorable Fred M. Vinson, Chief Justice of the United States, and the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Pierce G. White, respectfully shows this Court:

I.

SUMMARY STATEMENT

Respondent sued petitioner under Section 205(e) of the Emergency Price Control Act of 1942, as amended, to recover treble damages and attorney's fees for an alleged overcharge of rent. (R.1) The defense was that the property had been customarily rented or occupied on a seasonal basis and was exempt from rent control during the entire time it was rented to respondent (R.3), because the applicable Rent Regulation had been amended (11 FR 10518) prior to the lease by providing for

an exemption from control from October 1, 1946, to May 31, 1947 of all "housing accommodations located in a resort community and customarily rented or occupied on a seasonal basis prior to November 1, 1943, which were not rented during any portion of the period beginning on June 1, 1946 and ending on September 30, 1946." (R. 19, 29-30)

Petitioner is a school principal (R. 7) who leased his home in the Miami Defense-Rental Area to respondent, a winter tourist, for six months beginning November 15, 1946, for $2,000. (R. 18) The property in question is admittedly located in a resort community and was not rented during any portion of the period June 1, 1946, to September 30, 1946, both inclusive. (R. 19, 29-30)

From the undisputed facts regarding previous rental and occupancy (R. 7, 18-19) the trial court found that prior to November 1, 1943 the property had been customarily rented or occupied on a seasonal basis, and was exempt from rent control during the entire time it was leased to respondent. (R. 19-20) Judgment was entered for petitioner. (R. 17)

The Court of Appeals reversed (R. 33), holding petitioner's property was not customarily rented or occupied on a seasonal basis prior to November 1, 1943, because rental on a non-seasonal basis prevailed during the *majority of the months* prior to November 1, 1943 even though rental or occupancy on a seasonal basis dominated and prevailed, two to one, in the *winter seasons* embraced in the test period. (R. 31-32)

A petition for rehearing (R. 34) was denied May 5, 1949. (R. 37)

II.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under §1254(1) of the Judicial Code, Title 28, United States Code, Section 1254(1), Pub. L. No. 773, 80th Cong., 2d Sess., §1254(1), June 25, 1948.

The judgment of the Court of Appeals sought to be reviewed was rendered April 4, 1949 (R. 33) and a petition for rehearing, filed April 21, 1949 (R. 34), was denied May 5, 1949. (R. 37)

III.

QUESTIONS PRESENTED

1. In a seasonal winter resort area where the winter rental period is shorter than the summer rental period, should the dominant number of winter seasons within a specified period control in determining whether or not a landlord "customarily" rented or occupied property on a seasonal basis?

2. If different reasonable inferences may fairly be drawn from undisputed evidence, may an appellate court, even in a non-jury action, disturb findings based on such inferences where they are not clearly erroneous?

IV.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

1. The matter presented is of great public interest wherever seasonal exemption from rent control exists. It is substantial and important to landlords and tenants alike for the exemption here involved has been perpetuated in winter resort areas and its counterpart exists in summer resort areas.

2. The Court of Appeals has decided an important question involving a provision of the federal rent regulations which has not been, but should be, settled by this Court.

V.

PRAYER FOR WRIT

A certified transcript of the record of the case in the Court of Appeals is exhibited herewith, and made a part hereof, in compliance with Rule 38 of this Court.

Wherefore, your petitioner prays that a Writ of Certiorari may issue out of and under the Seal of this Court, directed to the United States Court of Appeals for the Fifth Circuit, commanding the said court to certify and send up to this Court a full and complete transcript of the record and proceedings of the said Court of Appeals in the case numbered and entitled on its Docket No. 12,452, Samuel Feinberg, Appellant, versus Pierce G. White, Appellee, to the end that said cause may be reviewed and the manifest errors of such court be revised and corrected, as provided by law; that upon the hearing by this Court, the judgment below be reversed, and such further proceedings be held herein as may be provided by law.

MILLER WALTON,
Attorney for Petitioner.

Supreme Court of The United States

October 1948 Term

No.....

PIERCE G. WHITE,
Petitioner,

vs.

SAMUEL FEINBERG,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

The Opinion of the Court Below

The opinion of the Court of Appeals, rendered April 4, 1949, is reported in 173 F 2d 585.

II.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1), providing for review by writ of certiorari of cases in the courts of appeals.

III.

Statement of the Case

The nature of the case and the decision of the Court of Appeals for the Fifth Circuit are set forth in the foregoing petition (pp. 1-2) which, in the interest of brevity, is adopted as a part of this brief.

IV.

Specification of Errors

The Court of Appeals erred in the following respects:

1. In reversing the Final Judgment of the District Court.

2. In finding that petitioner's property was not customarily rented or occupied on a seasonal basis prior to November 1, 1943, so as to exempt it from the rent regulations.

3. In drawing an inference (for which there is no factual basis in the record) and thereby reversing the District Judge's finding which was not clearly erroneous.

V.

Argument in Support of Petition

POINT I.

As stated in its opinion the question presented to the Court of Appeals was whether the trial court properly found on the undisputed facts, that petitioner's property was customarily rented or occupied on a seasonal basis prior to November 1, 1943, so as to exempt it from the rent regulations for housing applicable to the Miami Defense-Rental Area. (R. 29)

The exemption provision (11 FR 10518) is quoted at page 2 of the foregoing petition. The Agency's official interpretation (R. 14-15) is that the phrase "rented on a seasonal basis" includes housing accommodations which may have been rented in the summer months as well as in the winter months prior to November 1, 1943, provided there was a substantial fluctuation or variation in the rent charged during winter and summer

months, as distinguished from a level year-round rent remaining at the same amount throughout the entire year, winter and summer.

As officially interpreted the phrase "occupied on a seasonal basis" contemplates winter occupancy by the owner as distinguished from year-round occupancy, and the fact that an owner who occupied his home in the winter may have rented it during other months at an off-season rental does not render the exemption provision inapplicable. (R. 15)

Petitioner's house was new and its history prior to November 1, 1943 includes only the period from January 20, 1941 to November 1, 1943. There were three winters in that test period, the winters of 1941, 1942 and 1943.

During the winter of 1941 the house was rented on a seasonal basis for five weeks at $200 and then occupied by petitioner, the owner, until May 3, 1941, when it was rented to Army Lieutenant Hedrick, at an off-seasonal summer rental of $60 per month, a substantial variation from the prior in-seasonal winter rental of approximately $160 per month. (R. 7, 19) Thus, the first winter came within the purview of the exemption provision.

The Army tenant was permitted to remain in possession at his summer rental through the following fall, the entire winter season of 1942 and through November, 1942 (R. 7), so that admittedly there was no seasonal rental or occupancy the second winter.

The third and last winter prior to November 1, 1943 petitioner again occupied his home, moving in the latter part of January, 1943, and remaining until June 1, 1943, at which time he rented on a month to month off-seasonal summer rental of $75 per month. (R. 7, 19-20) Since petitioner had never occupied the house year-round or during any summer, his occupancy was on a seasonal basis during the third winter (1943) as required by the exemption provision in question.

The District Judge determined that "customarily" (not defined in the regulation) did not mean "without exception" and that rental or occupancy on a seasonal basis during two of the three seasons during the test period prior to November 1, 1943 was sufficient to bring

petitioner's property within the meaning of the applicable exemption amendment. (R. 19-20)

The Court of Appeals erroneously reached an opposite conclusion by determining that petitioner's customary or usual practice in renting or occupying on a seasonal or non-seasonal basis was established by the character of the rental in a majority of the months in the test period rather than by a majority of the winter seasons therein. (R. 31-32)

The exemption in question states that it applies to "Winter resort housing" in the Miami Defense-Rental Area (R. 19) and it is a matter of common knowledge that in a winter resort area, such as Miami, there are fewer winter months than summer months. The "season" for higher rents is much shorter than the off-season for lower rents. Obviously in a semi-tropical area a winter season comprises a fewer number of months than the remainder of the year.

If the proper test was the majority of months during which a landlord rented at a higher rental because of seasonal demand, or occupied his home in any year, the Miami amendment would be meaningless in practical effect, and it has not been so interpreted nor has the test of majority of months ever been applied by the Agency which promulgated the regulation.

The Court of Appeals opinion states: "The character and term of occupancy of both army lieutenants, Hedrick and McDonough, as well as the non-fluctuating monthly rental consistently paid by each of these tenants, is entirely incompatible and inconsistent with extraordinary seasonal rental and occupation." (R. 31) This is contrary to the facts as shown by the record, except for the winter of 1942, which is the only winter season covered by their tenancies out of the total of three such seasons involved. Except for that one winter season neither Hedrick's nor McDonough's tenancy, which were not consecutive, are incompatible or inconsistent with rental on a seasonal basis for the following reasons:

(a) Lt. Hedrick's tenancy beginning May 3, 1941, was at an off-season rental of $60 as compared to the previous seasonal rental during January and February

1941 of $160 per month. Granted he remained "until December, 1942" (R. 7), which the District Judge inferred meant through November, such occupancy includes but one winter season.

(b) Lt. McDonough's tenancy began June 1, 1943, after petitioner's self occupancy of his home the previous winter, and McDonough did not rent during any winter season included in the test period prior to November 1, 1943. (R. 7) His rent of $75 per month was an off-seasonal summer rent, as found by the District Judge. (R. 20)

POINT II

The decision of the Court of Appeals contravenes Rule 52 of the Federal Rules of Civil Procedure, as well as the rule that even where facts are undisputed, if different reasonable inferences may fairly be drawn from the evidence, an appellate court is forbidden, in a non-jury action, to disturb findings based on such inferences unless they are clearly erroneous. *Tennessee Coal, Iron & R. Co.* v. *Muscoda Local No. 123,* 5 Cir., 137 F. 2d 176, denying rehearing 135 F. 2d 320, affirmed 321 U. S. 590, rehearing denied 322 U. S. 771.

The District Judge's finding that the majority of winter seasons should control is not "clearly erroneous." On the contrary it is the correct conclusion. Yet the Court of Appeals adopted a "majority of months" test.

The statement in the Court of Appeals opinion that Lt. Hedrick's tenancy included and extended throughout one winter season and "part of another winter" is not supported by the record, nor is the statement that he rented "until some time in December, 1942." He was there "until December" (R. 7) which the District Judge inferred meant through November. The opinion draws a contrary inference for which there is no factual basis.

The District Judge specifically found that the $60 rental paid by Hedrick and the $75 rental paid by McDonough were "off-season" rentals (R. 19-20), in relationship to amounts charged for petitioner's property

in the winter season, and therefore consistent with rental or occupancy on a seasonal basis. The Court of Appeals, however, found that "the non-fluctuating monthly rental consistently paid by each of these tenants, is entirely incompatible and inconsistent with extraordinary seasonal rental and occupation" (R. 31), for which contrary finding there is no basis in the record. In this connection it must be borne in mind that occupancy by McDonough after November 1, 1943, as mentioned in the opinion, is immaterial and excluded by the terms of the exemption amendment, for rents and occupancy were frozen in the Miami Defense-Rental Area on November 1, 1943.

Respectfully submitted,

MILLER WALTON,
Attorney for Petitioner.